

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA HILOCK, Personal Representative of the
Estate of KENNETH R. BAUMGART, Deceased,

UNPUBLISHED
August 20, 2002

Plaintiff-Appellant,

v

No. 233424
Wayne Circuit Court
LC No. 99-927725-NO

RANDOLPH GEAR,

Defendant-Appellee,

and

RAMON A. JONES and DETROIT BOARD OF
EDUCATION,

Defendants.

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Gear's motion to set aside a default. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While the law favors the determination of claims on their merits, the policy of this state is generally against setting aside properly entered defaults. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999). A motion to set aside a default shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1). Good cause sufficient to set aside an entry of default includes such matters as (1) a substantial defect or irregularity in proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements which created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand. *Huggins v MIC Gen'l Ins Corp*, 228 Mich App 84, 87; 578 NW2d 326 (1998).

However, as explained in *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639; 617 NW2d 373 (2000), "[m]anifest injustice is *not* a third form of good cause that excuses a failure to comply with the court rules where there is a meritorious defense. Rather, it is the result that would

occur if a default were not set aside where a party has satisfied the ‘good cause’ and ‘meritorious defense’ requirements of the court rule.” *Id.* at 653 (emphasis in original).

While a showing of good cause is not excused if a meritorious defense is shown, “the strength of the defense obviously will affect the ‘good cause’ showing that is necessary. In other words, if a party states a meritorious defense that would be absolute if proven, a lesser showing of ‘good cause’ will be required than if the defense were weaker, in order to prevent manifest injustice.” *Alken-Ziegler, supra* at 233-234 (footnote omitted). A motion to set aside a default is within the sound discretion of the trial court and will not be reversed on appeal absent a clear abuse of that discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

As good cause, defendant stated that he was under the impression that his employer and apparent codefendant would undertake his defense, a mistake the court found to be reasonable. While defendant’s affidavit was insufficient to establish the existence of a meritorious defense, *Novi Constr, Inc v Triangle Excavating Co*, 102 Mich App 586, 590; 302 NW2d 244 (1980), the affidavit of his insurance adjuster was sufficient. *Hunley v Phillips*, 164 Mich App 517, 523; 417 NW2d 485 (1987). Although defendant’s reason for failing to answer the complaint may not have been the most compelling, given that he had a very strong defense to the action, we cannot find that the trial court abused its discretion in granting the motion to set aside the default.

Affirmed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen